

E-filed

JOHN L. BURRIS, ESQ. CSB#69888
 LAW OFFICES OF JOHN L. BURRIS
 Airport Corporate Centre
 7677 Oakport Street, Suite 1120
 Oakland, CA 94621-1939
 Tel: (510) 839-5200
 Fax: (510) 839-3882
 E/M: John.Burris@BurrisLaw.com

Attorneys for Josefina Escamilla,
 Jose Fernando Escamilla, and MAE
 and RFE, minors, by and through their
 guardian ad litem, Josefina Escamilla

FILED

JUL 29 2010

RICHARD W. WIEKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND

Full
Paid

Diss.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ADR

(OAKLAND)

C10-03334

CIVIL NO.

COMPLAINT FOR DAMAGES
 (CIVIL RIGHTS)

JOSEFINA ESCAMILLA, JOSE,
 FERNANDO ESCAMILLA, and
 MAE and RFE, minors, by and
 through their guardian ad litem,
 JOSEFINA ESCAMILLA,

Plaintiffs,

vs

CITY OF OAKLAND; Oakland
 police Sergeant GLOCK; Oakland
 police officer LINGER; Oakland
 police officer CRABTREE; Oakland
 police officer PAPPAS; and DOES
 1 through 15, inclusive.

Defendants.

JURY TRIAL DEMANDEDJURISDICTION

1. This action arises under Title 42 of the United States Code, Section
 1983 and the Fourth, Fifth, and Fourteenth Amendments to the United States

CO 44 SEC. N
 NOTICE OF ASSIGNMENT
 TO APPROPRIATE JUDGE SENT

1 Constitution. Jurisdiction is conferred upon this Court by Title 28 of the United States
 2 Code, Section 1331 and 1343. The Northern District is the proper venue in that all the
 3 acts complained of occurred in the City of Oakland, which is within this judicial
 4 district. Plaintiff requests the Court exercise jurisdiction over pendent state claims and
 5 causes of action under Title 28 of the United States Code, Section 1367. With respect
 6 to state causes of action, plaintiffs have filed suit within the time periods prescribed by
 7 California Government Code §§ 911.2 and 945.6 in that the requisite claim was filed on
 8 November 25, 2009, within six months of the incidents underlying the claim. Suit was
 9 filed on July 29, 2010, within six months of the date the claim was rejected, January
 10 29, 2010. All administrative requirements precedent to bringing suit against these
 11 defendants and upon the causes of action set forth herein have been fulfilled.

12 PARTIES

13
 14
 15 2. Plaintiffs JOSEFINA ESCAMILLA and JOSE FERNANDO
 16 ESCAMILLA and at the time of the incidents related herein were, husband and
 17 wife residing at 24 High Street in Oakland, California. Each is, and at all times
 18 herein mentioned was, a natural person, a citizen of the United States, and a resident of
 19 the State of California. Plaintiffs MAE and RFE are minors proceeding in this action
 20 through their guardian ad litem, JOSEFINA ESCAMILLA.

21
 22 3. Plaintiffs allege that defendant CITY OF OAKLAND is a municipal
 23 governmental entity within the County of Alameda, State of California, one of whose
 24 agencies is the Oakland Police Department. Defendant CITY OF OAKLAND is
 25 subject to suit pursuant to 42 U.S.C. § 1983 and Monell vs Dept. of Social Services,
 26 436 U.S. 658 (1978).

27 4. Defendants Oakland police Sergeant GLOCK, and Oakland police
 28

1 officers EDINGER, CRABTREE and PAPPAS were at all times mentioned herein
2 employed by defendant CITY OF OAKLAND and are sued in their official capacities
3 as law enforcement officers for CITY. In engaging in the conduct described herein,
4 while said defendants acted under the color of law in the course and scope of their
5 employment, they exceeded the authority vested in them by the United States
6 Constitution and by the CITY OF OAKLAND.
7

8 5. Plaintiffs are ignorant of the names and capacities, whether individual,
9 corporate, associate, or otherwise, of defendants named herein, as DOES 1 through 15,
10 inclusive and therefore sues these defendants by such fictitious names. Plaintiffs will
11 amend this complaint to allege their true names and capacities when ascertained.
12 Plaintiffs are informed and believes and thereon alleges that each of the fictitiously
13 named defendant is responsible in some manner for the occurrences herein alleged,
14 and that plaintiff's damages herein alleged were proximately caused by such
15 defendants.
16

17 6. Plaintiffs are informed and believe and hereon allege, that at all times
18 mentioned, the defendants, including those defendants sued as "DOE", and each of
19 them, were the agents and employees of each of the other defendants, and in doing the
20 things hereinafter alleged were acting within the scope of their authority as such
21 agents and employees, and with the permission and consent of each other. The
22 relationships between defendants were and are created by agreement, by ratification,
23 by ostensible authority or otherwise, and this Paragraph is not a limitation on the
24 manner in which said relationships were created as a matter of fact or a matter of law.
25
26
27
28

STATEMENT OF FACTS

7. Plaintiffs hereby incorporate paragraphs 1 through 6 by reference, as though the allegations therein were realleged at length and in full.

8. On May 26, 2009 at approximately 7:45 a.m., CITY OF OAKLAND police and ICE officers presented themselves at plaintiffs' home at 2424 High Street, Oakland, California requesting entry. When plaintiff JOSEFINA ESCAMILLA asked the officers to produce a warrant, the officers made forcible entry by using a tool to break the door. Upon entry, one of the ICE officers struck JOSEFINA ESCAMILLA in the head, rendering her briefly unconscious. Her son RFE was also struck and they were both placed in handcuffs. JOSE FERNANDO ESCAMILLA came downstairs and was forced to the ground. When he saw officers continuing to hit RFE, even as he was being secured on the ground, JOSE FERNANDO ESCAMILLA told the officers to leave his son alone. In response, more than one officer drew and pointed their firearms at plaintiffs. After extensive on-site questioning by ICE officers/agents, the Oakland police officers took JOSEFINA ESCAMILLA outside in her nightgown and in handcuffs, refusing to let her put on appropriate clothing. She was transported to Santa Rita jail and held there for two weeks on charges of resisting arrest. After being released from Santa Rita, she was required to wear a GPS device until, after three court appearances, the charges were dismissed. None of the plaintiffs had a prior criminal record. The Oakland officers seized and failed to return the camera with which RFE had attempted to record the entry, manhandling and arrest.

DAMAGES

9. As approximate result of defendants' conduct, and each of them, plaintiff JOSEFINA ESCAMILLA was painfully injured by being struck in the head and face.

1 She was required to seek and pay for medical care and suffered severe emotional
 2 distress and additional expenses as a result of her incarceration. Each of the plaintiffs
 3 suffered mental distress, anxiety, humiliation, embarrassment, and loss of her sense of
 4 security, dignity and pride as a result of the stripping of their constitutional privacy
 5 rights, and the unlawful seizure and use of force against them.
 6

7 10. Plaintiffs found it necessary to engage the services of private counsel to
 8 vindicate their rights under the law and are therefore entitled to an award of all
 9 attorneys' fees incurred in relation to this action for violation of their civil rights.
 10

11 FIRST CAUSE OF ACTION

12 Violation of 42 U.S.C. § 1983

13 (Defendants GLOCK, EDINGER,
 CRABTREE, PAPPAS and DOES 1 through 15)

14 11. Plaintiffs hereby incorporate paragraphs 1 through 10 by reference, as
 15 though fully set forth herein.

16 12. In doing the acts complained of herein, defendants acted under color of
 17 law to deprive the plaintiffs of certain constitutionally protected rights, including, but
 18 not limited to (a) the right not to be deprived of liberty without due process of law; (b)
 19 the right to be free from the use of excessive force and unlawful seizure, including
 20 invasion of privacy; (c) the right to be free from preconviction punishment; and (d) the
 21 right to equal protection of the laws of the United States.
 22

23 13. As a proximate result of defendants' wrongful conduct, Plaintiff
 24 suffered injuries and damages as set forth herein.

25 WHEREFORE, Plaintiffs pray for relief as set forth herein.

26 SECOND CAUSE OF ACTION

27 Violation of 42 U.S.C. § 1983

28 (Defendant CITY OF OAKLAND)

1 14. Plaintiffs hereby incorporate paragraphs 1 through 13 by reference, as
2 though fully set forth herein.

3 15. Defendant CITY OF OAKLAND were, prior to the incident giving rise
4 to this complaint, given notice of a pattern of ongoing constitutional violations and
5 unlawful practices, and likely continuance of same by ICE agents and officers who
6 operated in conjunction with, and with the support and active assistance of, Oakland
7 police officers. Said practices have resulted in, and continue to result in injury to
8 citizens residing in the CITY OF OAKLAND. Despite this notice, defendant CITY
9 OF OAKLAND demonstrated deliberate indifference to this pattern of practices by
10 failing to take necessary and appropriate measures to insure that Oakland police
11 officers did not continue to participate in the misconduct and that they reported such
12 misconduct when it occurred. This lack of an adequate supervisory or executive
13 response by defendant CITY OF OAKLAND demonstrates the existence of an
14 informal custom or policy which tolerates the continued violation of civil rights of
15 citizens by Oakland officers acting under the auspices of, and in concert with, ICE.
16 The acts of the individual defendant Oakland officers and sergeant were foreseeable
17 and proximate results of that indifference.

18 16. As a proximate result of defendants' wrongful conduct, Plaintiff
19 suffered injuries and damages as set forth herein.

20 WHEREFORE, Plaintiffs pray for relief as set forth herein.

21 THIRD CAUSE OF ACTION

22 California Civil Code §52.1(b)

23 (Defendants GLOCK, EDINGER,

24 CRABTREE, PAPPAS and DOES 1-15 inclusive)

25 17. Plaintiff hereby incorporates paragraphs 1 through 16 by reference, as
26 though fully set forth herein.

1 18. The conduct of defendants, as described herein, interfered with the
 2 plaintiffs' enjoyment of their rights under the constitution of the state of California,
 3 including their right to be free from violence or the threat of violence. Under the
 4 provisions of the Civil Code defendants are liable for exemplary damages and for
 5 twenty-five thousand dollars (\$25,000) in addition thereto for each offense, and for the
 6 payment of plaintiffs' attorney fees.
 7

8 19. As a proximate result of defendants' wrongful conduct, plaintiffs
 9 suffered violations of their constitutional rights and sustained damages.

10 WHEREFORE, Plaintiffs pray for relief as set forth herein.

11 FOURTH CAUSE OF ACTION

12 Intentional Infliction of Emotional Distress

13 (Defendants GLOCK, EDINGER,

14 CRABTREE, PAPPAS and DOES 1-15 inclusive)

15 20. Plaintiffs hereby incorporate paragraphs 1 through 19 by reference as
 16 though fully set forth.

17 21. The defendants knew, or had reason to know that their conduct would
 18 cause plaintiffs severe emotional distress and it did in fact cause plaintiffs extreme
 19 emotional distress, mental anguish, humiliation, and emotional and financial distress.

20 22. The aforementioned acts of the individual defendant officers and sergeant
 21 were willful, wanton, malicious and oppressive and justify the awarding of exemplary
 22 and punitive damages.

23 WHEREFORE, Plaintiff prays for judgment as set forth herein.

24 FIFTH CAUSE OF ACTION

25 Assault and Battery

26 (Defendants GLOCK, EDINGER,

27 CRABTREE, PAPPAS and DOES 1-15, inclusive)

23. Plaintiffs hereby incorporate paragraphs 1-22 by reference, as though fully set forth herein.

24. The defendant officers and sergeant placed plaintiffs in immediate fear of severe bodily harm by attacking and battering them without just provocation or cause. The defendants committed battery against plaintiffs by physically attacking them. As a proximate result of defendants' wrongful conduct, plaintiffs suffered damages as alleged.

25. Plaintiff has been required to retain counsel to redress the wrongful conduct by defendants alleged herein and is consequently entitled to an award of reasonable attorney's fees.

26. The conduct of defendants described herein was done with a conscious disregard of Plaintiff's rights such as to constitute oppression, fraud or malice entitling Plaintiff to punitive damages in an amount appropriate to punish or set an example of defendants for the public good.

WHEREFORE, Plaintiff prays for as set forth herein.

JURY DEMAND

27. Plaintiff demands that a jury try this matter.

PRAYER

WHEREFORE, plaintiff prays for relief as follows.

1. For special damages in an amount to be ascertained according to proof;
2. For general damages to be proven;
3. For statutory penalties;
4. For punitive damages against individually named defendants in an amount

1 sufficient to punish their conduct and to set an example such that similar
2 conduct is abated and/or deterred;

3 5. For reasonable attorney's fees;

4 6. For costs of suit incurred herein; and

5 7. For such other and further relief as the Court may deem just and proper.
6

7 Dated: July 28, 2010

LAW OFFICES OF JOHN L. BURRIS

8
9
10 By: 

11 John L. Burris, Esq.
12 Attorneys for Plaintiffs
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28